

COMP JA - Non-financial sector oversight

AMs covered: 799, 807, 808, 810, 815, 816, 743, 817, 827

AMs falling: 794, 795, 117, 797, 798, 796, 800, 118, 801, 802, 803, 804, 805, 806, 809, CONT 46, 811, 813, 812, 814, 818, CONT 47, 819, 820, 821, 822, 823, 824, 825, 826, 828, 829, 830, 831, 832, 833, 266, 30

SECTION 5

OVERSIGHT OF NON-FINANCIAL SECTOR

Article 31

AM799, 807, 808, 810, 815, 816.

Peer reviews

1. ~~The Authority shall periodically conduct peer reviews of some or all of the activities of non-financial supervisors to strengthen consistency and effectiveness in supervisory outcomes. To that end, the Authority shall develop methods to allow for an objective assessment and comparison between non-financial supervisors reviewed. ~~When planning and conducting peer reviews, existing information and evaluations already available with regard to the non-financial supervisor concerned, including any relevant information provided to the Authority in accordance with Article 11, assessments or reports drawn up by international organisations and intergovernmental bodies competent in the field of preventing money laundering or terrorist financing and any relevant information from stakeholders shall be taken into account.~~~~
2. ~~For the purposes of this Article, the Authority shall establish ad hoc peer review committees, which~~ **The peer reviews shall be composed of carried out by the staff from the Authority and members of the non-financial supervisors. The peer review committees shall be chaired by a member of the Authority's staff. The Chair of the Authority shall, following a call for proposals, propose the chair and the members of a peer review committee which shall be approved by the Executive Board in cooperation with the relevant staff of the non-financial supervisors.**
3. The peer review shall include an assessment of, but shall not be limited to:
 - (a) the adequacy of powers and financial, human and technical resources, the degree of independence, the governance arrangements and professional standards of non-financial supervisor to ensure the effective application of Chapter IV [OP please insert the next number to the AMLD, COM(2021)423];
 - (b) the effectiveness and the degree of convergence reached in the application of Union law and in supervisory practice, and the extent to which the supervisory practice achieves the objectives set out in Union law;

- (c) the application of best practices developed by non-financial supervisors whose adoption might be of benefit for other non-financial supervisors;
 - (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative sanctions and other administrative measures imposed against persons responsible where those provisions have not been complied with.
4. The Authority shall produce a report setting out the results of the peer review. That peer review report shall be prepared by the ~~peer review committee~~ **staff of the Authority, in cooperation with the relevant staff of the non-financial supervisors**, and adopted by the Executive Board, ~~having received the observations of the General Board in supervisory composition as to the consistency of application of the methodology with other peer~~ **which shall share it in a timely manner with the non-financial supervisor under review reports**. The report shall explain and indicate the follow-up measures that are deemed appropriate, proportionate and necessary as a result of the peer review. Those follow-up measures may be adopted in the form of guidelines and recommendations pursuant to Article 43 and opinions pursuant to Article 44. The non-financial supervisors shall make every effort to comply with any guidelines and recommendations issued, in accordance with Article 43. **The Authority shall transmit such reports without delay, on a confidential basis, at least to the European Parliament.**
 5. The Authority shall publish the findings of the peer review on its website and submit an opinion to the Commission where, having regard to the outcome of the peer review or to any other information acquired by the Authority in carrying out its tasks, it considers that further harmonisation of Union rules applicable to obliged entities in the non-financial sector or to non-financial supervisors would be necessary from the Union's perspective.
 6. The Authority shall provide a follow-up report two years after the publication of the peer review report. The follow-up report shall be prepared by the ~~peer review committee~~ **staff of the Authority, in cooperation with the relevant staff of the non-financial supervisors**, and adopted by the Executive Board, ~~having received the observations of the General Board in supervisory composition on the consistency with other peer~~ **which shall share it in a timely manner with the non-financial supervisor under review reports**. The follow-up report shall include an assessment of the adequacy and effectiveness of the actions undertaken by the non-financial supervisors that were subject to the peer review in response to the follow-up measures of the peer review report. The Authority shall publish the findings of the follow-up report on its website.
 7. For the purposes of this Article, the Executive Board shall adopt a peer review work plan every two years, which shall reflect the lessons learnt from the past peer review processes and discussions held in the General Board in supervisory composition. The peer review work plan shall constitute a separate part of the annual and multiannual working programme and shall be included in the Single Programming Document. In case of urgency or unforeseen events, the Authority may decide to carry out additional peer reviews.
 8. When supervision is performed by SRBs, the peer review exercise shall include the assessment of the adequacy and effectiveness of measures pursuant to Article 38 of [OP please insert the next number to the AMLD, COM(2021)423] that are taken by

the public authority in charge of overseeing these bodies to ensure that they perform their function to the standards required under Union law.

9. **When the peer review concerns SRBs**, representatives of **SRBs shall** be invited to participate in that peer review. (AM815, Ferber; AM816, Benjumea)

Article 31a

AM743, 817, 827.

Establishment of AML colleges in the non-financial sector

1. **3 years after the the entry into force of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423final], the Authority may, within the scope of its powers and without prejudice to the powers of the relevant supervisory authorities pursuant to Articles 34 and 34a of Directive [please insert reference – proposal for 6th Anti-Money Laundering Directive - COM/2021/423final], decide whether there is a need to establish AML colleges, and ensure their consistent functioning, for obliged entities in the non-financial sector operating in at least 4 Member States and with an annual EU-wide turnover of at least 200 million euros.**
2. **The Authority may:**
 - (a) **convene and organise the meetings of colleges where deemed appropriate;**
 - (b) **assist in the organisation of college meetings, where requested by the relevant supervisory authorities, or convene a college meeting at its own discretion where deemed necessary;**
 - (c) **ensure that all relevant information is collected and shared by the supervisory authorities in order to facilitate the work of the college and make such information accessible to the relevant authorities in the college;**
 - (d) **promote effective and efficient supervisory practices, including evaluating the risks to which obliged entities are or might be exposed;**
 - (e) **mediate and assist in resolving conflicts between participating supervisory authorities on their request;**
 - (f) **oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the supervisory authorities;**
 - (g) **identify instances where the absence of effective and efficient supervisory practices and activities in the context of AML colleges derives from inadequate or lack of transposition of EU law into national legislation, and duly report those instances to the Commission.**
3. **Such colleges may be used for exchanging information, providing mutual assistance and, where appropriate, coordinating the supervisory approach to the obliged entity, including the taking of appropriate and proportionate measures to address serious breaches of the requirements of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final] that are detected in the jurisdiction of a supervisor participating in the college.**

4. **The AML colleges shall be composed of permanent members, including the Authority and non-financial supervisors and, when unanimously agreed by them, observers.**

Where, pursuant to Article 29(3) of Directive [please insert reference to AMLD6], Member States allow SRBs to perform supervision of the entities referred to in Article 3, points (3)(a) and (b) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], the respective national oversight authorities, in accordance with Article 38 of Directive [please insert reference to AMLD6], shall be the permanent members.

5. **This article does not apply to SRBs, including SRBs overseeing obliged entities who exercise an independent legal profession or are public office holders who are appointed by the government to exercise judicial functions. (AM827 Karas et al.)**

Article 32

AM827.

Powers over supervisory authorities in the non-financial sector

1. Where a supervisory authority in the non-financial sector has not applied the Union acts or the national legislation referred to in Article 1(2), or has applied them in a way which appears to be a breach of Union law, in particular by failing to ensure that an entity under its supervision or oversight satisfies the requirements laid down in those acts or in that legislation, the Authority shall act in accordance with the powers set out in paragraphs 2, 3, 4, 6 and 7 of this Article.
2. Upon request from one or more supervisory authorities in the non-financial sector, the European Parliament, the Council, the Commission, or on its own initiative, including when this is based on well-substantiated information from natural or legal persons, and after having informed the supervisory authority in the non-financial sector concerned, the Authority shall outline how it intends to proceed with the case and, where appropriate, investigate the alleged breach or non-application of Union law.

The supervisory authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation including information on how the Union acts or in that legislation referred to in Article 1(2) are applied in accordance with Union law.

Whenever requesting information from the supervisory authority concerned has proven, or is deemed to be, insufficient to obtain the information that is deemed necessary for the purposes of investigating an alleged breach or non-application of Union law, the Authority may, after having informed the supervisory authority, address a duly justified and reasoned request for information directly to other supervisory authorities.

The addressee of such a request shall provide the Authority with clear, accurate and complete information without undue delay.

3. The Authority may, not later than six months from initiating its investigation, address a recommendation to the supervisory authority in the non-financial sector concerned setting out the action necessary to comply with Union law.

Before issuing such a recommendation, the Authority shall engage with the supervisory authority concerned, where it considers such engagement appropriate in order to resolve a breach of Union law, in an attempt to reach agreement on the actions necessary for compliance with Union law.

The supervisory authority in the non-financial sector shall, within ten working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4. Where the supervisory authority in the non-financial sector has not complied with Union law within one month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority, or on its own initiative, issue a formal opinion requiring the supervisory authority in the non-financial sector to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion within three months after the adoption of the recommendation. The Commission may extend this period by one month.

The Authority and the supervisory authority in the non-financial sector shall provide the Commission with all necessary information.

5. The supervisory authority in the non-financial sector shall, within ten working days of receipt of the formal opinion referred to in paragraph 5, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.
6. Where the formal opinion referred to in paragraph 4 is addressed to a supervisory authority which is a public authority overseeing a SRB, and where it does not comply with the formal opinion within the period specified therein, **particularly if its inaction is causing a serious risk to the Union's system of supervision**, to remedy such non-compliance in a timely manner, the Authority may adopt a decision addressed to an SRB **in order to ensure compliance with applicable** Union law.

Where Member States allow SRBs to perform supervision of the entities referred to in Article 3, points (3)(a) and (b) of Regulation [please insert reference – proposal for Anti-Money Laundering Regulation - COM/2021/420 final], the respective national oversight authority may send a duly justified request for a derogation of the first subparagraph if it considers it interferes with the independence of the judiciary. The request shall have suspensive effect, must be addressed to the Commission and shared with the Authority. A formal reply by the Commission must take no more than 10 working days. (AM827, Karas et al.)

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.

7. Decisions adopted in accordance with paragraph 6 shall prevail over any previous decision adopted by the supervisory authority on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 5 or to a decision pursuant to paragraph 7, supervisory authorities shall comply with the formal opinion or the decision, as the case may be.

Recitals

(30) In order to improve supervisory practices in the non-financial sector, the Authority should carry out peer reviews of supervisory authorities in the non-financial sector, including public authorities overseeing self-regulatory bodies (SRBs), and publish reports with its findings; those could be accompanied by guidelines or recommendations addressed to the relevant public authorities, including public authorities overseeing SRBs. **When performing those peer reviews, the Authority should not duplicate existing assessments and should take into account all relevant information.** SRBs should be able to participate in peer reviews ~~on a case-by-case basis where they have expressed their willingness to participate.~~

(30a) Cooperation between national supervisors is essential to ensure a common supervisory approach across the Union. To be effective, this cooperation has to be leveraged to the greatest extent possible which is why it is appropriate to mandate the Authority to decide whether it is necessary or not to set-up AML/CFT supervisory colleges with respect to non-financial sector obliged entities that operate under the freedom to provide services or of establishment in several Member States and with a significant annual EU-wide turnover. In addition, the Authority should facilitate the functioning of the AML supervisory colleges and contribute to the convergence of supervisory practices and the promotion of high supervisory standards.

(31) With the objective to increase the efficiency of the implementation of AML/CFT measures also in the non-financial sector, the Authority should also be able to investigate possible breaches or incorrect application of Union law by supervisory authorities in that sector, including public authorities overseeing SRBs. The national oversight authority can request a derogation to this rule when there is a risk of interference with the independence of the judiciary.